

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**RE: INCREASING THE PENETRATION RATE
FOR DISCOUNTED ELECTRIC, GAS AND
TELEPHONE SERVICE**

DTE 01-106

**COMMENTS OF THE MASSACHUSETTS COMMUNITY ACTION PROGRAM
DIRECTORS ASSOCIATION AND
THE MASSACHUSETTS ENERGY DIRECTORS ASSOCIATION
January 31, 2002**

I. INTRODUCTION

In this proceeding, the Department of Telecommunications and Energy (“Department”) is addressing important public policy issues: the chronic inability of low-income households to pay for essential gas, electricity and telephone services on their own and, therefore, the crucial role of discounted utility rates in helping these families to live with dignity. Despite recent declines in electric and gas prices from last year’s unprecedented peaks, the average low-income family continues to pay 15% (and often much more) of household income on basic utility service.¹ Due to last year’s price increases, the number of households in arrears and the cumulative amounts they owe has skyrocketed.² At the same time, benefit levels for the Low-Income Home Energy Assistance Program (“LIHEAP”), the key program that helps people pay their bills, have been cut

¹ “The Winter Energy Outlook for the Poor” (Economic Opportunity Studies, Dec. 2000), available at www.ncaf.org/eoserpt.pdf (showing that low-income households spent 14% to 19% of total income on household energy, for the years 1997 to 2000).

² “Consumer Debt for Utility Bills Runs High, A Legacy of Last Winter’s Price Increases,” Wall St. J., Oct. 16, 2002, at B8B (“the average debt level is more than double what it was a year ago” at several surveyed utilities).

more than 40% in Massachusetts.³ A declining economy only exacerbates these problems.

Between December 2000 and December 2002, the unemployment rate in Massachusetts jumped from 2.3% to 4.2%. Some 65,000 people lost their jobs during this period.⁴ Not surprisingly, applications to LIHEAP continue to rise, on the heels of a 20% increase last year.⁵

The Department's investigation into the penetration rates for discounted utility rates is thus timely and potentially quite beneficial to the tens of thousands of Massachusetts households eligible for but not yet enrolled on these rates. Recent data prepared by the Division of Energy Resources show that slightly less than one-third of the estimated number of eligible households have enrolled for electric and gas discounts.⁶ An analysis recently completed by the National Consumer Law Center (discussed *infra*) shows a comparable penetration rate for the telephone Lifeline and Link-Up programs. There is plenty of room for improvement, and the Department has wisely chosen to take the lead in finding ways to increase penetration rates.

In these comments, the Massachusetts Community Action Programs Directors Association and the Massachusetts Energy Directors Association (collectively, "MASSCAPDA") will discuss the following questions:

? What is the legal authority for these programs?

³ Last year's maximum benefit for the lowest income households was \$900 (excluding supplemental benefits to high consumption households); this year's is \$475. This latter figure will increase approximately \$125 once the federal government releases recently-appropriated funds.

⁴ Bureau of Labor Statistics, "Local Area Unemployment Statistics."
[Http://data.bls.gov/cgi-bin/surveymost](http://data.bls.gov/cgi-bin/surveymost).

⁵ Department of Housing and Community Development, "LIHEAP Application Taken Comparison," 1/11/02 (FY 2002 applications, through December 2002: 126,287. Prior year: 112,424).

⁶ "DOER Electric Discount Rate Outreach and Eligibility Report," www.state.ma.us/doer/pub_info/drr02.pdf.

- ? What is the current status of outreach efforts and penetration rates for the discount rates?
- ? How many people are eligible for the discounts, and through which benefits programs?
- ? What problems or obstacles limit enrollment currently, and how can they be best addressed?
- ? What administrative and practical problems have arisen, and how can they be best resolved?

The Massachusetts Community Action Programs Directors Association is a non-profit organization that includes all of the community action programs (“CAPs”) in the Commonwealth of Massachusetts. CAPs run a broad range of anti-poverty programs in the areas of energy, housing, early childhood education, nutrition, and senior services. In most areas of the state, the CAPs operate the low-income fuel assistance and weatherization programs. In a few areas, other non-profit or governmental agencies operate these energy programs. The Massachusetts Energy Director Association is a voluntary association of the energy directors of all of the local programs operate fuel assistance and weatherization in Massachusetts, including the CAP agencies and the other non-profit/governmental agencies just referenced. Drawing on federal weatherization funds,⁷ federal fuel assistance funds,⁸ and utility-sponsored programs, MASSCAPDA’s members insulate houses; tune-up, repair and replace old or inoperative furnaces; replace outmoded and inefficient appliances; and help educate low-income households in energy conservation. Low-income discounts play an important role in MASSCAPDA’s efforts. By

⁷ See 42 U.S.C. §§6861 *et seq.* (weatherization for low-income households).

⁸ See 42 U.S.C. §§8621 *et seq.*, especially §8624(b)(1)(C)(allowing states to use a portion of fuel assistance funds for “low-cost residential weatherization and other cost-effective energy-related home repair”).

bringing down the unit costs of energy, these programs make it possible for many low-income families to maintain utility service that would otherwise be terminated for non-payment. Many low-income families simply cannot afford to keep up with their energy bills without a combination of discounted prices, fuel assistance payments, and living in homes that use energy efficiently. MASSCAPDA thus sees the discounts as vital to the success of its efforts in keeping people warm and keeping their utilities connected. MASSCAPDA is grateful to the Department for opening a proceeding that can significantly increase the penetration rate for the discount programs.

II. LEGAL AUTHORITY FOR DISCOUNTS

A. Electric and Gas Discounts

In 1979, the Department approved the first discount rate for low-income electricity or gas consumers. In response to a voluntary proposal by Massachusetts Electric Company, the Department approved “a reduced rate for certain elderly poor customers,” those over age sixty-five and receiving Supplemental Security Income. *American Hoechst*⁹ v. *Dep’t of Public Utilities*, 379 Mass. 408 (1979). In overturning the appellant’s challenge to the Department’s authority to approve such a rate, the Supreme Judicial Court emphasized that the company offered the rate voluntarily and that the rate was available only to a defined group of needy customers. *Id.*, at 411-413.

Subsequently, other utilities in the Commonwealth adopted low-income discount rates,

⁹ So in original. The company’s actual name was “American Hoechst.”

voluntarily or in response to directions from the Department. In *Western Massachusetts Electric Co.*, DPU 87-260 (1988), the Department stated its reasons for supporting low-income rates:

As a matter of policy, the Department recognizes that electricity is a basic necessity of life in modern society. Rigid application of cost-based ratemaking principles in this case could jeopardize the ability of those with poverty-level incomes to retain electric service. A subsidized rate for low-income individuals should be available if the impact of the subsidy on non-participants is reasonable. . . .Accordingly, the Department finds that the Company should implement a subsidized low-income rate available to low-income residential customers.

By the mid-1990's almost every regulated gas and electric company offered a discount rate,¹⁰ although the amount discounted and the rules governing eligibility varied by company.

In 1997, the legislature mandated that electric companies, all of which had discounts at that time, must continue to offer those discounts to a defined group of low-income households:

The department shall require that distribution companies provide discounted rates for low-income customers comparable to the low-income discount rate in effect prior to March 1, 1998. . . . Eligibility for the discount rates established herein shall be established upon verification of a low-income customer's receipt of any means tested public benefit, or verification of eligibility for the low-income home energy assistance program, or its successor program, for which eligibility does not exceed 175 per cent of the federal poverty level based on a household's gross income.

G.L. c. 164, § 1F(4)(i).¹¹ The legislature also required utilities to conduct substantial outreach and to consider use of automatic matching as a means to facilitate outreach and enrollment:

Each distribution company shall conduct substantial outreach efforts to make said low-income discount available to eligible customers and shall report to said division [of energy resources], at least annually, as to its outreach activities and results. Outreach may include an automated program of matching customer accounts with lists of recipients of said means tested public benefits programs and based on the results of said matching program, to presumptively offer a low-income discount rate to eligible customers so identified. . . .

¹⁰ Blackstone Gas did not have a discount rate until the end of 2001.

¹¹ This statute also includes a lengthy but non-exclusive list of programs serving low-income people.

Id.

Thus, prior to 1997, the Department had implemented low-income gas and electric discount rates as part of its inherent regulatory authority over distribution companies, an authority affirmed in at least one instance by the Supreme Judicial Court.¹² Since 1997, low-income discount rates for electric customers are required by statute. In implementing the statute, the Department adopted companion regulations that require electric companies to file low-income discount rates and to make those rates available to those on “the low-income home energy assistance program” or to a customer receiving benefits from “any means-tested public benefit program for which eligibility does not exceed 175% of the federal poverty level.” 220 C.M.R. 11.04(5). Based on its inherent regulatory authority under G.L. c. 25 and G.L. c. 164, the Department promulgated similar regulations that apply to gas distribution companies. 220 C.M.R. 14.03. MASSCAPDA is not aware of any legal challenge to the Department’s inherent or statutory authority to require companies to adopt low-income discount rates, other than the unsuccessful challenge by industrial customers in *American Hoechst*.

MASSCAPDA notes that the Department is explicitly authorized to “establish service quality standards for each distribution, transmission and gas company, including, but not limited to, standards for universal service.” G.L. c. 164, §1F(7). This acts as yet another source of authority for adopting discount rates that help to make service more universally available.

B. Telephone Discounts

Qualified telephone companies offer their low-income customers discounts on monthly

¹² As noted, however, the Court’s decision was limited to the specific facts presented in *American Hoechst*.

service charges and on initial installation charges through, respectively, the Lifeline and Link-Up programs. The lifeline programs were initiated by the Federal Communications Commission in 1985, but later embodied in federal Telecommunications Act. 47 U.S.C. §254; 47 C.F.R. §§54.401 *et seq.* Massachusetts offers the most generous assistance in the country: \$13.85 off of the monthly bill.¹³ Telephone companies are directly and fully compensated for the cost of offering these programs through a dedicated charge on telephone bills.

III. OUTREACH EFFORTS, PENETRATION RATES AND ELIGIBLE POPULATIONS

The Department's first question seeks comments "describ[ing] outreach efforts to identify eligible discount customers." MASSCAPDA will address outreach efforts, eligible populations and penetration rates as a set of closely related topics.

Electric and gas companies¹⁴ vary in their outreach efforts but, in general, all of the companies insert periodic messages in their bills about the availability of the discounts; train their Customer Service Representatives ("CSRs") so that they can discuss the discount programs with customers; distribute relevant brochures, newsletters, or hand-outs; use media (but to widely varying degrees); and coordinate their outreach efforts with community-based organizations, governmental agencies, churches, schools, etc. MASSCAPDA is sympathetic to the difficulty of reaching many low-income people, a disproportionate percentage of whom do not speak English as their primary language or suffer from various disabilities that impede their ability to

¹³ "Lifeline Monthly Support by State or Jurisdiction (As of April 2001)", based on data from the Universal Service Administrative Company.

¹⁴ MASSCAPDA has very little information on how Verizon conducts outreach for its discount programs.

learn about the discount program and to fill out the required applications.¹⁵ However, these outreach challenges should be turned into opportunities for the companies to focus more on community-based outreach and some of the outreach tools included in the Division of Energy Resources (“DOER”) outreach guidelines: coordination with the Department of Revenue Child Support Division; use of point-of-purchase displays with the state and federal agencies that offer qualifying benefits; and working with schools to reach families in Head Start and the National School Breakfast and Lunch programs.¹⁶ MASSCAPDA encourages the Department to insure that companies translate written materials into languages that are widely spoken in their service territories and that companies engage in face-to-face community meetings in order to reach customers who are more likely to learn about discount rates through churches, schools and community organizations than from written materials. MASSCAPDA also encourages the Department, DOER and the gas, electric and telephone companies to include information about discount rates on the home page (or a clearly-worded link on the home page) of their respective web sites. At the present, customers who have Internet access and wish to learn about discount rates in Massachusetts would have very hard time doing so whether they browse the web sites of the Department, DOER or most of the companies.¹⁷ While relatively few low-income households have regular access to the Internet, this is an inexpensive means of providing useful

¹⁵ MASSCAPDA refers the Department to the attached letter of Michelle Lerner, Greater Boston Legal Services (at 1-4), which details the problems many of her low-income clients have in learning about and applying for discount rates.

¹⁶ See note 6, *supra*.

¹⁷ The Washington Utilities and Transportation Commission includes detailed information about the telephone discount programs on its web site, www.wutc.wa.gov. However, even there the consumer would have to use the links to the “Consumer Info” and “Telephone” pages to get this information.

information to customers.

Outreach efforts geared toward reaching a “typical” potential participant cannot effectively reach all groups of eligible participants. For example, radio advertisements targeted toward English-speaking, elderly populations will likely not be effective in expanding participation among Hispanic households that include adults and children. Further, “points of contact” with low-income households vary widely between urban and rural communities.

Because of this diversity, effective outreach strategies must include components that are decentralized, and geared toward meeting unique needs of sub-groups within the low-income population. Some of the utility companies in the Commonwealth have made strong efforts to increase low-income program participation. However, these companies do not have the kinds of ties to local communities that are necessary to maximize participation among those eligible to do so. Community-based approaches to outreach are necessary to reach the broadest possible population.

Community-based outreach may take a variety of forms, but should entail utilizing the skills and contacts of local service delivery organizations. Such organizations should be capable of identifying appropriate points of contact to reach specific groups within a contained geographic area, and of coordinating the efforts and procedures of benefit program agencies and intake workers within that area. Further, a community-based approach should entail increasing the points within a community where a customer may apply for utility payment assistance.

MASSCAPDA understands that a group that includes the human service delivery network serving Cape Cod and the Islands has developed a proposal to conduct community-based outreach. MASSCAPDA encourage the Department and commenting parties to work together to

test the application, perhaps on a pilot basis, of such an approach, and to determine the participation and program administration benefits that may be derived in the process.

In order to craft outreach efforts that more effectively reach the broadest possible range of populations, it is necessary to understand more about the composition of participant and eligible non-participant groups, and about the factors that lead to participation.

For example, if there were better information about the ethnic composition of program participants and eligible non-participants in a geographic area, new outreach efforts could be geared toward reaching specific, under-served populations. Similarly, if large proportions of participants in a particular means-tested government benefits program do not participate in utility discount rate programs, interested parties could work with the agency dispensing those benefits to alter intake procedures or take other steps that would increase discount rate participation. MASSCAPDA understands that Western Massachusetts Electric Company is conducting a new survey to develop better information about discount rate participants. MASSCAPDA applauds this effort and encourages other companies to engage in similar efforts in their own service territories.

In addition to the need for information regarding discount rate participation by different categories of government assistance recipients, the Department and interested parties would benefit from having better, more consistent data regarding utility arrearages, issuance of termination notices, terminations for non-payment and duration of terminations for non-payment. MASSCAPDA applauds the recent efforts of the Department to obtain such information from companies, and notes that regular, consistent reporting is required to identify new trends in disruptive, costly service terminations. MASSCAPDA recommends that the Department

continue to gather information regarding arrearages and terminations for non-payment, and that the information be made readily available to the public through postings on the Department's web site.

Finally, outside of the reports DOER has prepared and that Verizon files, there appears to be very little available information either on the number of customers receiving the discounts (either by month quarter) or the percentage or dollar value for typical customers getting the discount. MASSCAPDA believes that the Department should require companies to report this information in a simple and accessible format.

MASSCAPDA strongly supports the efforts of utilities to train their CSRs to handle inquiries about discount rates. Utilities are not human services agencies, and CSRs are not fluent with the terminology and rules of government assistance programs. MASSCAPDA therefore asks the Department to make sure that companies continue to train all CSRs on a routine basis. With proper training, CSRs will be far more likely to identify customers who may be in need of and eligible for the discount rates and to answer any questions that customers may raise.

To date, the combined outreach efforts of the companies, relevant government agencies and MASSCAPDA's own members have resulted in approximately one-third of eligible electric customers enrolling in the discount program, based on partial-year 2001 data collected by DOER and MASSCAPDA's own estimates of the number of low-income household eligible:

2001	NGrid	NStar	Unitil	WMECo	Total Disc	Total Cus	% (Disc/Tot)
Jan	60427	51889	1571	15720	129607	2231662	5.8%
Feb	63785	51073	1670	16629	133157	2198146	6.1%
Mar	65708	52847	1857	16937	137349	2208460	6.2%
Apr	68392	53079	1865	17324	140660	2202742	6.4%
May	69947	53822	2032	17877	143678	2205234	6.5%

June	71105	51943	2066	18011	143125	2202092	6.5%
July	71635	50857	2060	17797	142349	2191668	6.5%
Aug	71711	50446	2015	17607	141779	2184771	6.5%
Sep	71929	52507	1989	17255	143680	2467641	5.8%
Avg	68293	52051	1903	17240	139487	2232491	6.3%
LI Cus	167058	179262	21882	41150	409352		
%	40.9%	29.0%	8.7%	41.9%	34.1%		
Sources	DOER (except # of LI cus: NCLC from 1990 Census)						

DOER calculated the statewide 1999 penetration rate at 27%, based on projections by the Massachusetts Institute for Social and Economic Research of the growth in eligible low-income households since 1990. The penetration rate for the Lifeline and Link-Up programs is also in the range of 30%, based on an analysis by the National Consumer Law Center (“NCLC”) of data compiled by the Universal Service Administrative Company.¹⁸ NCLC’s analysis (attached) places Massachusetts seventh in the country for telephone discount penetration rates. With the exception of California, all of the states with higher penetration rates are in the New York-New England region, and most utilize variants of the automatic enrollment/electronic enrollment techniques that MASSCAPDA recommends below.

The percentages mentioned above are rough estimates, in the sense that no up-to-date source provides a firm number for the denominator of the calculation: the number of low-income families at or below 175% of poverty, receiving public assistance and using a particular utility service. As just noted in the context of telephone penetration rates, however, these percentages can offer useful information about a particular state’s or utility’s relative success in reaching

¹⁸ MASSCAPDA has no information on the penetration rates of gas company discounts.

eligible households and can also help identify trends over time.

The raw numbers of people on the discount rates show some seasonal or cyclical trends that merit further attention by the Department and parties interested in this docket. The DOER's "Electric Discount Rate Outreach and Eligibility Report" shows a series of peaks and valleys in the numbers of households enrolled on the discount rates:

YEAR	Total # Enrolled	% change, from prior year
1997	129,526	
1998	118,912	-8.19
1999	130,081	+9.39
2000	126,851	-2.48

The year-to-year swings are neither insignificant nor easily explained. It is possible that these swings reflect purging of lists of households considered ineligible but who then re-certify their eligibility and re-enroll (a point discussed below), but there are also other possible explanations, include the cyclical nature of LIHEAP and its effects on discount rate enrollment, changes in outreach activities by utilities, or random factors. The Department should explore these swings further, as there are similarly unexplained declines in telephone discount enrollment¹⁹:

DATE	Total # Enrolled	% change, from prior period
Jan.-Mar. 2000	170,524	

¹⁹ The source for all data in this table are the Reports numbered 39 to 44, filed by Verizon with the Department, "Lifeline Telephone Assistance Plan/Link-Up America Assistance Plan," Docket 89-57.

Apr.-June 2000	167,579	-1.72
July-Sept. 2000	162,200	-3.21
Oct.-Dec. 2000	158,140	-2.51
Jan.-Mar. 2001	160,594	+1.26
Apr.-June 2001	161,011	+0.26

The Department and parties would benefit by knowing what efforts or activities by the companies or by customers may be causing these ups and downs in penetration rates.

Unemployment rates have been either flat or on the rise since March 2000²⁰; the number of households receiving fuel assistance has jumped more than 20% in the same period; and TANF and food stamps caseloads have also been either flat or rising.²¹ The erratic declines and increases in enrollment rates for the electric and telephone discount rates are thus not easily explained by underlying economic conditions and seem contrary to what might be expected.

In setting any new policies for outreach and enrollment, the Department should consider the available information regarding the number of households currently receiving benefits under the most widely utilized benefits programs that qualify people for the low-income discount:

PROGRAM	# SERVED	NOTES
LIHEAP	134,000 ('01)	App's up 14%, FY 02 to date. Source: DHCD
SSI	163,000 (11/01)	Source: DTA
Food Stamps	112,000 (11/01)	Up 10% since April 2001. Source: DTA

²⁰ Bureau of Labor Statistics, <http://data.bls.gov/cgi-bin/surveymost>.

²¹ "DTA Today," www.state.ma.us/dtatoday/facts.

EAEDC ²²	15,000 (11/01)	Up 8% since Feb. 2001. Source: DTA
TAFDC ²³	45,000 (11/01)	Up 7% since March 2001. Source: DTA
Public housing	90,000	Source: DHCD ²⁴
Section 8	65,000	Source: DHCD ²⁵
MassHealth	973,000	Individuals, not households. Several distinct programs. Source: Div. Medical Assistance

This table does not include several of the programs covered by G.L. c. 164, §1F(4)(i), including school-based food programs (National School Lunch Program and School Breakfast Program) and income-tested programs for veterans operated by the Massachusetts Department of Veteran Services and the U.S. Department of Veterans Affairs.²⁶ The cumulative enrollment for the programs listed above well exceeds 1,000,000. While many households are served by more than one program (e.g., many LIHEAP households are on SSI; many public housing tenants get food stamps) or have incomes above 175% or even 200% of the poverty guideline, the Department can safely assume that there are tens of thousands of households who can be readily identified as income-eligible for discount rates but not yet enrolled. To the extent that the Department can work with the utility companies and government agencies that provide benefits

²² Emergency Aid to the Elderly, Disabled and Children.

²³ Temporary Assistance to Families with Dependent Children. Also known as “TANF,” for Temporary Assistance for Needy Families.

²⁴ www.state.ma.us/dhcd/publications/HOW_TO2K.HTM. Maximum eligibility is 80% of median income, which is greater than 175% of poverty. However, most families earn well below 175% of the federal poverty guideline.

²⁵ See www.state.ma.us/dhcd/publications/HOW_TO2K.HTM. Program rules require that 75% of the units go to families earning less than 30% of median income, which is well below 175% of poverty.

²⁶ MASSCAPDA has not been able to compile data on enrollment in these programs. However, MASSCAPDA will promptly forward any additional information it receives to the Department.

to identify these households, the discount rates will reach a much higher percentage of those in need. MASSCAPDA discusses means for increasing enrollment below.

Before addressing new enrollment approaches, however, MASSCAPDA will discuss “strategies for addressing varying income requirements of public benefits programs” (Order to Open Investigation, at 6) as this will affect the number of people perceived as eligible, outreach efforts to particular populations, and, ultimately, penetration rates. Among the programs listed in G.L. c. 164, §1F(4)(i), only three programs have maximum eligibility guidelines that exceed 175% of poverty: LIHEAP, medical care programs operated by the Division of Medical Assistance under the umbrella of MassHealth and the public/subsidized housing programs.²⁷ MASSCAPDA suggests different approaches for each program.

At the time the Restructuring Act passed, the eligibility threshold for LIHEAP was 175% of the federal poverty guideline. Households making above 175% of the poverty guideline were not eligible. Thus, the statutory language that made fuel assistance households eligible for discounts was synonymous with making households at or below 175% of poverty eligible:

Eligibility for the discount rates . . . shall be established upon . . . verification of eligibility for the low-income home energy assistance program . . .

The Department’s implementing regulations appear to make all LIHEAP households eligible for discount rates regardless of income, as LIHEAP is discussed in a clause independent of the clause that mentions other programs serving households at or below 175% of poverty:

Each Distribution Company shall establish customer eligibility for its Low-income Customer Tariff based on a Customer’s eligibility for the low-income home energy assistance program or its successor program, or a Customer’s receipt of any means-tested

²⁷ If the Department wishes, MASSCAPDA can provide a summary table of income eligibility by program.

public benefit program for which eligibility does not exceed 175% of the federal poverty level based on a household's gross income or other criteria approved by the Department.

220 C.M.R. 11.04(5).

The distinction between LIHEAP and other “means-tested public benefit program[s] for which eligibility does not exceed 175% of the federal poverty level” became significant at the end of the FY 00 fuel assistance program, when eligibility was increased to 200% of poverty. Some (MASSCAPDA believes all) electric companies began asking the agencies that distribute LIHEAP funds to identify those households whose incomes exceed 175% of poverty and excluded those households from the discount rate. MASSCAPDA believes that most (possibly all) gas companies include all LIHEAP recipients in their discount programs, even those households between 175% and 200% of poverty. **MASSCAPDA recommends that the Department should require all companies to offer their discounts to all households receiving LIHEAP, for several reasons.** As the Department long ago recognized, “[E]lectricity is a basic necessity of life in modern society. . . .Compan[ies] should implement subsidized low-income rate[s]” for their low-income residential customers. *Western Massachusetts Electric Co.* DPU 87-260. MASSCAPDA believes that all households receiving LIHEAP need discount rates to obtain essential utility services. Further, the Department should impose a consistent approach on the currently inconsistent practices of regulated companies regarding the eligibility of LIHEAP households for the discount rates. The impact on the utilities or their ratepayers will be small. According to data compiled by the Department of Housing and Community Development (“DHCD”), only 6% to 7% of all LIHEAP households are in the tier between 175% and 200% of the poverty guideline. The cost of holding all companies to the same standard (200% of poverty)

will be minimal, especially because most gas companies meet this standard already. Finally, making all fuel assistance households eligible for the discount rates is consistent with the plain wording of 220 C.M.R. 11.04(5).

Public housing programs present a far different challenge. First, the income eligibility rules vary between state and federal programs, between public housing programs (where the housing authority owns the units) and subsidized housing programs (where a private owner or the owner's tenant receives a subsidy), and even from site to site. Second, the income and eligibility rules are of almost mind-boggling complexity. Third, given that housing subsidies are tied to where people live, subsidized families do not lose their housing as soon as their income increases above the initial eligibility level. There are families who legally remain in public or subsidized housing with incomes well above 175% or 200% of the poverty guideline. MASSCAPDA does not suggest that every family in public housing should receive a subsidy. Instead, **MASSCAPDA suggests that local housing authorities, which certify household income on an annual basis, identify those households who are at or below 175% of poverty.** These households should then be made eligible for the discount rates.

Regarding the cluster of programs offered by the Division of Medical Assistance ("DMA") under the rubric of MassHealth, MASSCAPDA does not have enough detailed information to make specific recommendations. Some of the programs have income guidelines well below 175% of poverty, but others have guidelines up to 400% of poverty. MASSCAPDA hopes that DMA will participate in this docket and assist the Department and interested parties in developing tools for identifying and enrolling DMA recipients on the discount rates.

IV. MEANS OF INCREASING ENROLLMENT AND FACILITATING PROGRAM ADMINISTRATION

The Department has asked parties to address several topics that relate to new methods for increasing enrollment or removing existing barriers that hinder enrollment, including the following:

.....

(2) Describe current procedures used for subscriber eligibility verification and enrollment.

(3) Discuss whether current subscriber eligibility standards would permit utilities to enroll each other's customers in discount programs.

.....

(5) Discuss whether utilities could implement a computer matching program to verify subscriber eligibility and enroll eligible customers in discount programs.

(6) Discuss whether any legal impediment exists to enrolling eligible customers in all available discount programs.

(7) Discuss privacy concerns related to electronic sharing of financial or other confidential information.

MASSCAPDA will begin with the practical issues of verifying eligibility and enrolling customers. Any of the companies that file comments will likely provide the details unique to their own circumstances. In general terms, most electric and gas utilities enroll many of their discount customers in connection with LIHEAP. In many areas of the state, the local fuel assistance "sub-grantee"²⁸ electronically notifies the appropriate gas or electric company of those households that have been approved for fuel assistance payments. Most electric (but not gas) companies ask for coded files that allow them to distinguish households above or below 175% of

²⁸ In the parlance of LIHEAP, the Department of Housing and Community Development ("DHCD") is the "grantee" of the federal LIHEAP funds. The two dozen local agencies (mostly community action programs) that accept applications and make payments are known as "sub-grantees" of DHCD.

the poverty guideline, or lists that already exclude those LIHEAP households with incomes between 175% and 200% of the poverty guideline. Most gas companies place all LIHEAP households on the discount rate. For the eligible LIHEAP households, enrollment and verification are seamless and integrated into the LIHEAP application process. At the time of applying for LIHEAP, the household signs a form giving the sub-grantee permission to release information to utility companies. **This simple tool resolves questions that would otherwise arise about the sub-grantees' right to release private information to utilities. The waiver form also expedites the verification and enrollment process. This model should be expanded to other government benefits programs, as discussed below.**

For non-LIHEAP households, the process is more difficult. The households must first learn about the discount rates. This is particularly difficult for the large number of low-income people who do not speak English as the primary language or who suffer from various disabilities. The experience of low-income advocates is that many of the clients they work with have no idea that their utilities offer discount rates.²⁹ In addition, with the advent of welfare reform, tens of thousands of families that previously received TANF or food stamps no longer do.³⁰ Customers often learn about the discount rates through the agency that provides their benefits. The fewer people on these benefit programs, the fewer who learn about the discounts.

Once a non-LIHEAP customer learns about the discount rate, he or she must fill out an application and submit documentation demonstrating receipt of means-tested government

²⁹ See attached letter from Greater Boston Legal Services ("GBLS letter").

³⁰ Between 1993 and 1999, TANF enrollment in Massachusetts dropped from 115,000 to 47,000, a 59% decline. The food stamp caseload dropped from 192,000 in 1994 to 112,000 by early 2000.

assistance. MASSCAPDA has no quarrel with requiring applications or documentation, but understands that any delay in completing the process works to the customer's disadvantage. MASSCAPDA understands that there is often a lag of one to three months between the time a customer first inquires about being placed on the discount rate and the time the company approves the application and actually applies the discount to current bills. Apparently, even LIHEAP households that are added to the discount rate program through communications between the local fuel assistance agency and the utility face substantial delays. **MASSCAPDA encourages the Department to work out protocols that result in the discount being applied retroactively to the date of the customer's initial inquiry, if the customer applies directly and eventually provides all required documentation. If the customer documents that he or she has been on the qualifying benefits program continuously from a date preceding the date of initial inquiry, MASSCAPDA recommends that the discount be applied retroactively for a period of up to twelve months. For LIHEAP-qualified households, MASSCAPDA recommends that the discount apply retroactively to the beginning of the then-current LIHEAP program year (October 1).**

LIHEAP and non-LIHEAP households also face problems due to procedures for purging lists of enrolled households that are no longer eligible and re-enrolling previously dropped households. These procedures vary from company to company, but some companies routinely drop LIHEAP-qualified households from their discount rates sometime in the fall or early winter (e.g., around November or December). Many households, however, are not determined eligible for LIHEAP until later in the heating season. Because most companies do not apply the discounts retroactively, households can face unjustified gaps in their discount eligibility. For

example, a households that applies for fuel assistance in January 2000 may not get on the discount rate until February or March due to processing time, then dropped in September 2000. Households on TANF, food stamps or other benefits programs can face similar problems. Households that are on LIHEAP year in and year out still face gaps, often of several months, in discount rate coverage. The Department can solve these administrative problems by adopting reasonable and fair purging and re-enrollment rules. **At a minimum, customers that have been determined eligible for the discount rate via their participation in LIHEAP should not be dropped from the discount rate earlier than the subsequent February, in order to give households adequate time to apply and the sub-grantees adequate time to notify the utility that the customer has again been determined eligible. Alternatively, utilities should make the discount retroactive back to the date the LIHEAP household was dropped if the customer is in fact determined to be LIHEAP eligible in any two consecutive years. There should be no gap in discount coverage for households who are determined LIHEAP eligible year in and year out.**

Further, no customer should be dropped without prior written notification from the company and without being offered a reasonable period to document continued eligibility.

MASSCAPDA believes that some companies may drop clients after receiving electronic data from a LIHEAP sub-grantee or government agency that the household is no longer receiving government assistance, without providing adequate, advance notification to the customer.

Finally, at the time of initial enrollment, customers should be offered the opportunity to designate other programs for which they are eligible. For example, a LIHEAP-qualified household should be given the opportunity to note that they are also receiving

SSI. This would avoid the problem of a household being purged because the utility determines that the family is not receiving, e.g., LIHEAP. The household might still be able to show it is receiving, e.g., SSI.

MASSCAPDA strongly supports the expansion of computer matching and electronic enrollment to identify and subscribe new discount customers. Clearly, the LIHEAP-utility model has worked very well in moving tens of households onto the discounts while decreasing the need for utility outreach to LIHEAP households and minimizing paperwork.

The governing statute provides that outreach efforts by utilities may include:

establishing an automatic program of matching customer accounts with lists of recipients of said means tested public benefits programs and based on the results of said matching program, to presumptively offer a low-income discount rate to eligible customers so identified; provided, however, that the distribution company, within 60 days of said presumptive enrollment, informs any such low-income customer of said presumptive enrollment and all rights and obligations of a customer under said program, including the right to withdraw from said program without penalty.

G.L. c. 164, §1F(4)(i). This is the precise model that New York State follows in its telephone lifeline program. There, a single state agency compiles an electronic file that contains identifying information on all households receiving a broad range of public assistance benefits. Verizon, as the dominant phone carrier, receives this list and “presumptively offer[s]” the discount rate to each identified household. These presumptively approved households separately receive a letter informing them of their “rights and obligations” under the discount program, including the right to withdraw. New York has the fifth highest penetration rate for telephone lifeline in the country (52%, as calculated by NCLC).

The challenge before the Department is to work with other agencies that may be willing to follow either the LIHEAP model or the New York model just described. There are two

obstacles, each of which can be overcome in this proceeding. First, unlike DHCD and its sub-grantees, other government programs and agencies have not developed communications and data transfer protocols, as well as personal ties, with utility companies. DHCD and its sub-grantees have been paying utility bills for two decades and have developed a web of relationships and procedures for moving information among the relevant players. Simply by opening this proceeding and inviting other government agencies to take part, the Department is providing those other agencies an opportunity to learn how the LIHEAP-utility connection works and a chance to learn from past experience. There is no reason why other agencies cannot develop the administrative tools for transferring information to utilities that would qualify benefits recipients for discount rates. Second, government agencies and utility companies are legitimately concerned about the privacy rights of low-income households. No agency or utility wants to be in the position of releasing information about a family's income status or receipt of government assistance unless it clearly has the legal right to do so.³¹ MASSCAPDA notes, however, that G.L. c. 164, §1F(4)(i) can be read as giving government agencies statutory authorization for releasing information to utilities, if limited to the purpose of presumptively qualifying households for the discount rates. But the Department need not address this admittedly difficult legal question. The present proceeding provides the opportunity to share the success of the LIHEAP-utility model with others. Other government agencies should be able to use the same effective tool that LIHEAP sub-grantees have developed: the addition of language at the end of

³¹ G.L. c. 214, §1B provides: "A person shall have a right against unreasonable, substantial or serious interference with his privacy. The superior court shall have jurisdiction in equity to enforce such right and in connection therewith to award damages."

the benefits application form that gives the agency explicit permission to release information to utilities or other agencies for the purpose of qualifying the applying household for the discount rate. While this language does not currently appear on application forms other than the LIHEAP form, MASSCAPDA believes that all benefits programs require recipients to re-certify their income or status periodically (at least annually) and sometimes in-person. **Thus, for all new applicants, appropriate language can be added to application forms, and for all current recipients, language can be added to recertification forms.** Within the course of a year, all government agencies could obtain written permission from all recipients willing to grant permission. This approach would practically avoid the problems “related to electronic sharing of financial or other confidential information” (the Department’s seventh question) because those who could claim privacy rights would waive any such rights in writing. Just like the LIHEAP sub-grantees and utility companies now electronically match lists of LIHEAP recipients against utility customer lists to identify and enroll customers onto the discount rates, other government agencies could do the same (thus answering the Department’s fifth question). **MASSCAPDA suggests that it is particularly important to draw the Department of Transitional Assistance, the Division of Medical Assistance, the Social Security Administration and the housing side of DHCD into these proceedings because each of these agencies oversees or directly provides assistance to a very large number of households eligible for the discount rate.** MASSCAPDA also suggest that the Department of Education may be able to facilitate access to families participating in the school breakfast and lunch programs. Finally, the Massachusetts Department of Veteran Services and the U.S. Department of Veterans Affairs may be able to assist in enrolling recipients of income-tested veterans benefits. However,

MASSCAPDA has no information on the number of people on these latter programs.

The Department has raised two other strategies for facilitating increased enrollment on the discount rates:

(3) Discuss whether current subscriber eligibility standards would permit utilities to enroll each other's customers in discount programs; and

(6) Discuss whether any legal impediment exists to enrolling eligible customers in all available discount programs.

MASSCAPDA thinks that it may prove unproductive to follow the route of attempting to get utilities to enroll each other's customers in discount programs. The concept is attractive. Many customers would prefer to apply to one utility (either the telephone, gas or electric company), be determined income-eligible for discounts by that one company, and then be enrolled in the discounts all three companies offer. Practically, however, MASSCAPDA anticipates that utilities will raise concerns about slight differences in their individual eligibility rules³² or issues about differing enrollment practices. Various parties may raise privacy concerns about one utility sharing customer-specific information, including income status information, with another company. If any concerns raised can be quickly resolved, MASSCAPDA does not object in principle to the concept of easing the application process for customers who wish to apply only once for discounts offered by the three types of utilities.

As an alternative to having utilities cross-enroll customers, however, MASSCAPDA believes that there are no insurmountable legal impediments to the fuel assistance sub-

³² For example, the list of programs that qualify a household for telephone lifeline (47 C.F.R. 54.409) is somewhat narrower than the list of programs that qualify a household for electric discounts (G.L. c. 164, §1F(4)(i)). In addition, many gas companies allow all LIHEAP households onto their discounts, while electric companies include only those LIHEAP households with incomes at or below 175% of the poverty guideline.

grantees facilitating the enrollment of eligible customers in all available discount programs.

The sub-grantees are in an excellent position to facilitate that effort. The sub-grantees have long-established relationships with the gas, electric and telephone³³ companies and are seen as agencies with a specialty in certifying income eligibility. In addition, because the sub-grantees are non-profit corporations and not involved in selling utility services, fewer privacy concerns will be raised if the sub-grantees are involved in transferring information about income eligibility. The utilities themselves may well prefer to have the sub-grantees play this role, rather than developing protocols for one utility to directly share information with another utility. If the Department agrees to support this approach, customers would be able to apply only once to be determined enrolled in the electric, gas and telephone discount programs.

MASSCAPDA also suggests that the Department should seriously consider allowing receipt of the Earned Income Tax Credit (“EITC”) by households at or below 175% of the poverty guideline as a means to identify and qualify discount-eligible households.

According to the General Accounting Office, 12.9 million households received the EITC in 1999, 75% of the 17.2 million households that the GAO estimates were eligible.³⁴ Nationally, the EITC thus serves far more households than LIHEAP (approximately 5 million households), TANF (less than 3 million households), food stamps (approximately 7 million households) or other public assistance programs, and also reaches a much higher percentage of its own estimated

³³ While the sub-grantees do not operate any telephone assistance program, Verizon has made arrangements with the sub-grantees to identify households eligible for LIHEAP for the purpose of making these households eligible for Lifeline and Link-Up.

³⁴ Letter of James R. White, GAO’s Director of Tax Issues, to Congressman William J. Coyne (Dec. 14, 2001).

eligible population than other programs. MASSCAPDA would be happy to work with the Department to explore how EITC households can be identified and enrolled.

The current discount programs only allow households receiving or determined eligible for various government assistance programs to receive the utility discounts. There are, however, households with very low-incomes who are not on any government benefits program at every point in time. For example, thousands of Massachusetts households are no longer on TANF, or will stop receiving TANF in the near future, due to time limits imposed under welfare reform. Many of these households also incorrectly assume that they are no longer eligible for food stamps and, thus, no longer receive this government benefit. As another example, many low-income households are not programmatically eligible for fuel assistance because they are not legally responsible for the heating bill or do not pay for their heat, indirectly, as part of the rent. This year, DHCD has begun to address this problem in a limited way. DHCD, through its sub-grantees, certifies households as income eligible for LIHEAP but not currently eligible for payment of benefits in those instances when the household is not programmatically eligible. Through this process, the household becomes eligible for the utility discounts. MASSCAPDA encourages the Department to support and expand on this approach, allowing the sub-grantees to certify that a household's income is at or below 175%. At the present time, the sub-grantees are only doing this for income-eligible households that apply for fuel assistance believing, incorrectly, that they are also program eligible (e.g., responsible for their heating bills). However, there are many low-income households that know they are not programmatically eligible and simply do not apply. **MASSCAPDA would be happy to work with the utilities and the Department to develop protocols for certifying the income of households not**

programmatically eligible for other government assistance programs but whose incomes have been determined to be at or below 175% of the poverty guideline.

V. COST IMPLICATIONS

To the extent that the Department's efforts in this docket succeed, the total cost of the discount programs will increase. While telephone companies are fully compensated for the costs of Lifeline and Link-Up even if enrollment increases, due to the existence of a dedicated fund for these programs, gas and electric companies face financial disincentives to increasing enrollment.

G.L. c. 164, §1F(4)(i) unconditionally requires companies to make "substantial outreach efforts to make said low-income discount available to eligible customers" and specifies the automatic enrollment techniques at issue in this docket as one such outreach effort. But utilities may resist expanding their efforts to enroll customers because of the impact on revenues.

Gas and electric utilities may of course recover all prudent costs of service, including the cost of offering discounted service, in a rate case, subject to any rate caps or freezes that are in effect. MASSCAPDA presently takes no position on whether other mechanisms should be considered, but will respond if the utilities propose any.

To put this issue in context, MASSCAPDA notes that even if the Department's efforts in this docket increased the number of people receiving discounts by 50% (from approximately 30% of the eligible households to 45%), the discounts would still reach less than half of the estimated eligible population. This would be well below the penetration rate for the Earned Income Tax Credit, which requires far more effort to complete the required paperwork. Yet increasing the number of people on the discount rates by 50% would provide substantial benefits

to more than 60,000 electric and gas households and 80,000 telephone customers.

MASSCAPDA is not predicting that the Department's efforts in this docket will increase participation by 50%, but, if so, the costs would be *de minimis* from the view of other ratepayers who will eventually be required to pay for the increased discounts through their rates.

MASSCAPDA estimates that the cost of expanding participation in the electric discount rates would be in the range of .3 mills per kWh, or between 15¢ and 20¢ per month for typical residential customers using 500 kWh to 600 kWh per month. This is an extremely minimal cost in comparison to the substantial social benefit of assisting 70,000 addition low-income families.

VI. CONCLUSION

MASSCAPDA appreciates this opportunity to comment on means of increasing participation in utility discount rate programs. MASSCAPDA encourages the Department to follow up on this initial round of comments by setting up informal working groups that can discuss implementation of the various ideas that parties will offer. MASSCAPDA particularly encourages the Department to continue the efforts it has already begun to bring government agencies that provide means-tested assistance into this process because these agencies have the greatest ability to identify and help enroll low-income families onto the discount rates.

MASSCAPDA looks forward to working with the Department and other interested parties.

Respectfully submitted,

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**For the Massachusetts Community Action Programs
Directors Association and
Massachusetts Energy Directors Association**